

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY SCOTT SMITH, JR.,

Defendant.

Case No. CR-23-139-JFH

GOVERNMENT’S UNOPPOSED MOTION TO CONTINUE TRIAL

The United States of America, by and through Christopher J. Wilson, United States Attorney for the Eastern District of Oklahoma; Kristen M. Clarke, Assistant Attorney General for the Civil Rights Division; Clay A. Compton, Assistant United States Attorney for the Eastern District of Oklahoma; and Laura B. Gilson, Trial Attorney for the Criminal Section, Civil Rights Division, respectfully requests the Court continue this case from the current jury trial date to March 4, 2024. Additionally, the parties request the Court continue the other pretrial scheduling deadlines accordingly. As ground for this request, the United States submits the following:

1. This case is currently set for jury trial on February 5, 2024. (Doc. 27).
2. Motions and objections to the parties’ already-filed notices are due on December 18, 2023. The pretrial conference has been set for January 11, 2024. Voir dire, jury instructions, stipulations, and trial briefs are due on January 26, 2024. (*Id.*)
3. On December 9, 2023, the victim in this matter, identified in the indictment as K.H., was physically assaulted at her residence. K.H. was hospitalized following the assault. In the past days, following her release from the hospital, K.H. underwent oral surgery to assist her in healing from the assault. K.H. currently has numerous stitches in her mouth, missing teeth, and wounds

and bruises on her face and body. It is likely that K.H. will need to undergo additional medical procedures and surgeries to heal from the assault.

4. The United States is moving for a 30-day continuance to allow K.H. additional time to undergo any needed medical procedures or surgeries and to physically heal from the assault. Absent a continuance, the United States believes that K.H.'s medical state could make her unavailable for trial preparation and trial.

5. Defense counsel has no objection to the requested continuance. The Defendant will execute a Speedy Trial Act waiver related to this unopposed motion.

6. The United States will provide discovery regarding the physical assault of K.H., including photographs of her injuries, to defense counsel on an expedited basis.

7. The Speedy Trial Act provides that a district court may continue a case “at the request of the attorney for the Government” if the court finds “the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 § 3161(h)(7)(A); *see United States v. Toombs*, 574 F.3d 1262, 1268 (10th Cir. 2009). In making such a finding, the district court must consider, among other things, whether “the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice,” 18 U.S.C. § 3161(h)(7)(B)(i), and whether “the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny . . . the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence,” *id.* § 3161(h)(7)(B)(iv). The United States submits that a 30-day continuance of this matter, when the victim has been violently physically assaulted and requires time to heal from the assault and when the Defendant does not object to the continuance and will file a Speedy Trial Act waiver, would

serve the ends of justice, and that failure to grant this continuance would potentially make proceeding with trial on February 5, 2024 impossible, be a miscarriage of justice, and deny the United States the reasonable time necessary for effective trial preparation, notwithstanding its exercise of due diligence.

WHEREFORE, for the reasons set forth above and good cause shown, the United States respectfully requests that this Court enter an Order continuing the trial and remaining pretrial deadlines in this matter for 30 days until the Court's March 4, 2024 jury trial docket.

Respectfully submitted,

CHRISTOPHER J. WILSON
United States Attorney

s/ Clay A. Compton
Clay A. Compton, OBA # 19781
Assistant United States Attorney
520 Denison Ave.
Muskogee, OK 74401
(918) 684-5100
(918) 684-5150 FAX

KRISTEN M. CLARKE
Assistant Attorney General
Civil Rights Division, U.S. Dept. of Justice

s/ Laura B. Gilson
Laura B. Gilson
Trial Attorney
Criminal Section, Civil Rights Division
150 M Street NE
Washington, DC 20002
(202) 598-1141

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2023, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Richard Koller, Counsel for the Defendant.

s/ Clay A. Compton
Clay A. Compton, OBA # 19781
Assistant United States Attorney